

[First Reprint]

**SENATE, No. 3033**

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**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

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INTRODUCED SEPTEMBER 19, 2011

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**Senator JOSEPH M. KYRILLOS, JR.**

**District 13 (Middlesex and Monmouth)**

**Co-Sponsored by:**

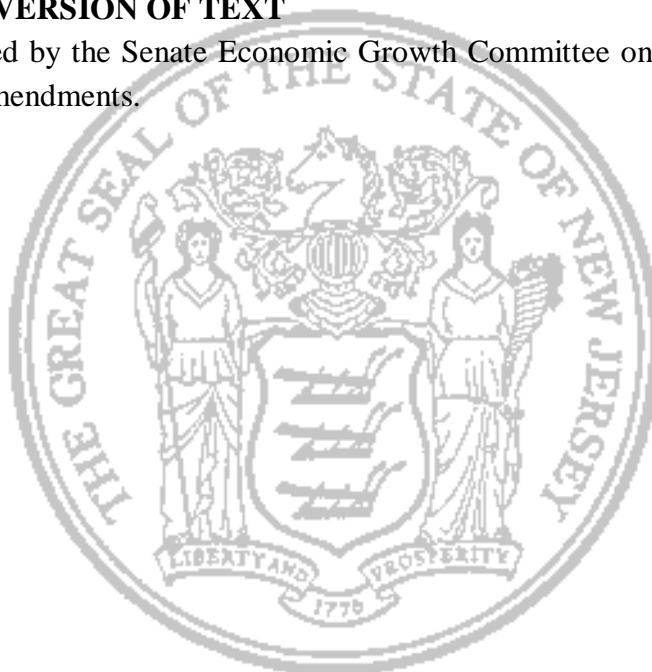
**Senator Oroho**

**SYNOPSIS**

Establishes Grow New Jersey Assistance Program to provide tax credits to certain businesses; changes eligibility and certain other requirements for other business assistance programs.

**CURRENT VERSION OF TEXT**

As reported by the Senate Economic Growth Committee on September 19, 2011, with amendments.



**(Sponsorship Updated As Of: 9/23/2011)**

1 AN ACT providing for the availability of tax credits to certain  
 2 businesses and supplementing Title 34 of the Revised Statutes  
 3 **'[and],'** amending **'[P.L.2007, c.346] various parts of the**  
 4 **statutory law, and repealing section 6 of P.L.1996, c.25**<sup>1</sup>.

5  
 6 **BE IT ENACTED** by the Senate and General Assembly of the State  
 7 of New Jersey:

8  
 9 1. (New section) Sections 1 through 8 of this act shall be  
 10 known and may be cited as the "Grow New Jersey Assistance Act."

11  
 12 2. (New section) As used in this act:

13 "Affiliate" means an entity that directly or indirectly controls, is  
 14 under common control with, or is controlled by the business.  
 15 Control exists in all cases in which the entity is a member of a  
 16 controlled group of corporations as defined pursuant to section 1563  
 17 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the  
 18 entity is an organization in a group of organizations under common  
 19 control as defined pursuant to subsection (b) or (c) of section 414 of  
 20 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer  
 21 may establish by clear and convincing evidence, as determined by  
 22 the Director of the Division of Taxation in the Department of the  
 23 Treasury, that control exists in situations involving lesser  
 24 percentages of ownership than required by those statutes. An  
 25 affiliate of a business may contribute to meeting either the qualified  
 26 investment or full-time employee requirements of a business that  
 27 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-  
 28 209).

29 "Authority" means the New Jersey Economic Development  
 30 Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

31 "Business" means a corporation that is subject to the tax imposed  
 32 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a  
 33 corporation that is subject to the tax imposed pursuant to sections 2  
 34 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of  
 35 P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership,  
 36 an S corporation, or a limited liability corporation. A business shall  
 37 include an affiliate of the business if that business applies for a  
 38 credit based upon any capital investment made by or full-time  
 39 employees of an affiliate.

40 "Capital investment" in a qualified business facility means  
 41 expenses incurred after application, but before the end of the tenth  
 42 year after, the effective date of P.L. , c. (C. ) (pending  
 43 before the Legislature as this bill) for: a. site preparation and  
 44 construction, repair, renovation, improvement, equipping, or  
 45 furnishing of a building, structure, facility, or improvement to real

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Senate SEG committee amendments adopted September 19, 2011.

1 property; and b. obtaining and installing furnishings and machinery,  
2 apparatus, or equipment for the operation of a business in a  
3 building, structure, facility, or improvement to real property.

4 <sup>1</sup>"Eligible position" means a full-time position retained or hired  
5 by a business in this State for which a business provides employee  
6 health benefits under a group health plan as defined under section  
7 14 of P.L.1997, c.146 (C.17B:27-54), a health benefits plan as  
8 defined under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a  
9 policy or contract of health insurance covering more than one  
10 person issued pursuant to Article 2 of chapter 27 of Title 17B of the  
11 New Jersey Statutes.<sup>1</sup>

12 "Full-time employee" means a person employed by the business  
13 for consideration for at least 35 hours a week, or who renders any  
14 other standard of service generally accepted by custom or practice  
15 as full-time employment, or a person who is employed by a  
16 professional employer organization pursuant to an employee leasing  
17 agreement between the business and the professional employer  
18 organization, in accordance with P.L.2001, c.260 (C.34:8-67 et  
19 seq.) for at least 35 hours a week, or who renders any other standard  
20 of service generally accepted by custom or practice as full-time  
21 employment, and whose wages are subject to withholding as  
22 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
23 et seq. or an employee who is a resident of another State but whose  
24 income is not subject to the "New Jersey Gross Income Tax Act,"  
25 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
26 for the partnership for at least 35 hours a week, or who renders any  
27 other standard of service generally accepted by custom or practice  
28 as full-time employment, and whose distributive share of income,  
29 gain, loss, or deduction, or whose guaranteed payments, or any  
30 combination thereof, is subject to the payment of estimated taxes, as  
31 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
32 et seq. "Full-time employee" shall not include any person who  
33 works as an independent contractor or on a consulting basis for the  
34 business.

35 "Partnership" means an entity classified as a partnership for  
36 federal income tax purposes.

37 "Professional employer organization" means an employee leasing  
38 company registered with the Department of Labor and Workforce  
39 Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

40 "Program" means the "Grow New Jersey Assistance Program"  
41 established pursuant to section 3 of P.L. , c. (C. ) (pending  
42 before the Legislature as this bill).

43 "Qualified business facility" means any building, complex of  
44 buildings or structural components of buildings, and all machinery  
45 and equipment located within a qualified incentive area, used in  
46 connection with the operation of a business.

47 "Qualified incentive area" means an area designated pursuant to  
48 P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1

1 (Metropolitan), Planning Area 2 (Suburban); an area zoned for  
2 development pursuant to a master plan adopted by the New Jersey  
3 Meadowlands Commission pursuant to subsection (i) of section 6 of  
4 P.L.1968, c.404 (C.13:17-6) or subject to a redevelopment plan  
5 adopted by the New Jersey Meadowlands Commission pursuant to  
6 section 20 of P.L.1968, c.404 (C.13:17-21); any land owned by the  
7 New Jersey Sports and Exposition Authority, established pursuant  
8 to P.L.1971, c.137 (C.5:10-1 et seq.), within the boundaries of the  
9 Hackensack Meadowlands District as delineated in section 4 of  
10 P.L.1968, c.404 (C.13:17-4); a pinelands regional growth area, a  
11 pinelands town management area, a pinelands village, or a military  
12 and federal installation area established pursuant to the pinelands  
13 comprehensive management plan adopted pursuant to P.L.1979,  
14 c.111 (C.13:18A-1 et seq.); an area designated for development,  
15 redevelopment, or economic growth within the Highlands Region;  
16 federally owned land approved for closure under any federal Base  
17 Closure and Realignment Commission action; or any property  
18 consisting of a vacant commercial building having over 400,000  
19 square feet of office <sup>1</sup>, laboratory, or industrial<sup>1</sup> space available for  
20 occupancy for a period of over one year or is negatively impacted  
21 by the approval of a “qualified business facility,” as defined  
22 pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208).

23 “Retained full-time job” means an eligible position that  
24 currently exists in New Jersey and is filled by a full-time employee  
25 but which, because of a potential relocation by the business, is at  
26 risk of being lost to another state or country. For the purposes of  
27 determining a number of retained full-time jobs, the eligible  
28 positions of an affiliate shall be considered the eligible positions of  
29 the business.<sup>1</sup>

30  
31 3. (New section) a. The Grow New Jersey Assistance Program  
32 is hereby established as a program under the jurisdiction of the New  
33 Jersey Economic Development Authority and shall be administered  
34 by the authority. The purpose of the program is to encourage  
35 economic development and job creation and to preserve jobs that  
36 currently exist in New Jersey but which are in danger of being  
37 relocated outside of the State. To implement this purpose, and to  
38 the extent that funding for the program is available, the program  
39 may provide tax credits to eligible businesses. To be eligible for  
40 any tax credits pursuant to P.L. , c. (C. ) (pending before the  
41 Legislature as this bill), a business’s chief executive officer or  
42 equivalent officer shall demonstrate to the authority, at the time of  
43 application, that: (1) the business will make, acquire, or lease a  
44 capital investment of at least \$20,000,000 at a qualified business  
45 facility at which it will employ at least 100 full-time employees in  
46 retained full-time jobs; and (2) the capital investment resultant from  
47 the award of tax credits and the resultant retention and creation of  
48 eligible positions will yield a net positive benefit to the State.

1       b. In determining whether a proposed capital investment will  
2 yield a net positive benefit, the business's chief executive officer, or  
3 equivalent officer, shall submit a certification to the authority  
4 indicating that the existing jobs are at risk of leaving the State and  
5 that the business's chief executive officer, or equivalent officer, has  
6 reviewed the information submitted to the authority and that the  
7 representations contained therein are accurate. In the event that this  
8 certification by the business's chief executive officer, or equivalent  
9 officer, is found to be willfully false, the authority may revoke any  
10 award of tax credits in their entirety, which revocation shall be in  
11 addition to any other criminal or civil penalties that the business  
12 and the officer may be subject to. When considering an application  
13 involving intra-State job transfers, the authority shall require the  
14 business to submit the following information as part of its  
15 application: a full economic analysis of all locations under  
16 consideration by the business; all lease agreements, ownership  
17 documents, or substantially similar documentation for the business's  
18 current in-State locations; and all lease agreements, ownership  
19 documents, or substantially similar documentation for the potential  
20 out-of-State location alternatives, to the extent they exist. Based on  
21 this information, and any other information deemed relevant by the  
22 authority, the authority shall independently verify and confirm, by  
23 way of making a factual finding by separate vote of the authority's  
24 board, the business's assertion that the jobs are actually at risk of  
25 leaving the State, before a business may be awarded any tax credits  
26 under this section.

27       <sup>1</sup>c. A project that consists solely of point-of-final-purchase  
28 retail facilities shall not be eligible for a grant of tax credits. If a  
29 project consists of both point-of-final-purchase retail facilities and  
30 non-retail facilities, only the portion of the project consisting of  
31 non-retail facilities shall be eligible for a grant of tax credits. If a  
32 warehouse facility is part of a point-of-final-purchase retail facility  
33 and supplies only that facility, the warehouse facility shall not be  
34 eligible for a grant of tax credits. For the purposes of this section,  
35 catalog distribution centers shall not be considered point-of-final-  
36 purchase retail facilities.<sup>1</sup>

37  
38       4. (New section) The authority shall require an eligible  
39 business to enter an agreement prior to the issuance of tax credits.  
40 The agreement shall include, but shall not be limited to, the  
41 following:

42       a. A detailed description of the proposed project which will  
43 result in job creation or retention, and the number of full-time  
44 employees.

45       b. The term of the tax credits, and the first year for which the  
46 tax credits may be claimed.

47       c. Personnel information that will enable the authority to  
48 administer the program.

1 d. A requirement that the applicant maintain the project at a  
2 location in New Jersey for at least 1.5 times the number of years of  
3 the term of the tax credits, with at least the number of full-time  
4 employees as required by section 6 of P.L. , c. (C. )  
5 (pending before the Legislature as this bill) and a provision to  
6 permit the authority to recapture all or part of any tax credit  
7 awarded, at its discretion, if the business does not remain at the site  
8 for the required term.

9 e. A method for the business to report annually to the authority  
10 the number of full-time employees for which the tax credits are to  
11 be made.

12 f. A provision permitting an audit of the payroll records of the  
13 business from time to time, as the authority deems necessary.

14 g. A provision which permits the authority to amend the  
15 agreement.

16 h. A provision establishing the conditions under which the  
17 agreement may be terminated and awarded tax credits are  
18 recaptured, in whole or in part, by the authority at its discretion.

19  
20 5. (New section) a. The value of each tax credit for an eligible  
21 business shall be equal to \$5,000 per year for a period of ten years  
22 for each new or retained full-time job certified by the authority  
23 pursuant to section 3 of P.L. , c. (C. ) (pending before the  
24 Legislature as this bill) to be located at the qualified business  
25 facility, subject to the provisions of this section.

26 b. In addition to any grant of tax credits determined pursuant to  
27 subsection a. of this section, a bonus award of up to an additional  
28 \$3,000 per job of the amount of the original tax credits may be  
29 made to any eligible business as determined by the authority. In  
30 making a bonus award to an eligible business, the authority shall  
31 consider the following factors, such that whether the business: (1) is  
32 an industry identified by the authority as desirable for the State to  
33 maintain; (2) relocates to a location within a qualified incentive  
34 area adjacent to <sup>1</sup>, or within walking distance or short-distance-  
35 shuttle service of,<sup>1</sup> a public transit facility, as determined by the  
36 authority <sup>1</sup>,<sup>1</sup> by regulation; (3) creates jobs using full-time  
37 employees in eligible positions whose annual salaries, according to  
38 the Department of Labor and Workforce Development, are greater  
39 than the average full-time salary in this State; or (4) is locating to a  
40 project site that is or has been negatively impacted by the approval  
41 of a "qualified business facility," as defined pursuant to section 2 of  
42 P.L.2007, c.346 (C.34:1B-208).

43 <sup>1</sup>c. Notwithstanding the provisions of subsections a. and b. of  
44 this section, (1) the amount of tax credits available to be applied by  
45 the business annually shall not exceed one tenth of the capital  
46 investment certified by the authority pursuant to section 6 of  
47 P.L. , c. (C. ) (pending before the Legislature as this bill),  
48 and (2) the number of new full-time jobs shall not exceed the

1 number of retained full-time jobs for which a business receives a  
2 tax credit. For the purposes of this section, a “new full-time job”  
3 means an eligible position created by the business at the qualified  
4 business facility that did not previously exist in this State.<sup>1</sup>

5  
6 6. (New section) a. (1) The value of all credits approved by the  
7 authority pursuant to P.L. , c. (C. ) (pending before the  
8 Legislature as this bill) shall not exceed \$200,000,000, except that  
9 the value of all credits approved by the authority pursuant to this  
10 section may exceed \$200,000,000 if the board of the authority  
11 determines the credits to be reasonable, justifiable, and appropriate;  
12 provided, however, the combined value of all credits approved by  
13 the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq. and  
14 P.L. , c. (C. ) (pending before the Legislature as this bill)  
15 shall not exceed \$1,500,000,000.

16 (2) A business, including any affiliate of the business or any  
17 business that is a tenant within any qualified business facility, shall  
18 make or acquire capital investments totaling not less than  
19 \$20,000,000 in a qualified business facility, at which the business  
20 shall employ not fewer than 100 full-time employees to be eligible  
21 for a credit pursuant to P.L. , c. (pending before the Legislature  
22 as this bill). A business that acquires or leases a qualified business  
23 facility shall also be deemed to have acquired the capital investment  
24 made or acquired by the seller or landlord, as the case may be.

25 (3) A business shall not be allowed tax credits pursuant to  
26 P.L.1996, c.25 (C.34:1B-112 et seq.) relating to the same capital  
27 and employees that qualify the business for tax credits pursuant to  
28 P.L. , c. (pending before the Legislature as this bill). A business  
29 that is allowed a tax credit under this section shall not be eligible  
30 for incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1  
31 et al.). A business shall not qualify for a tax credit under this  
32 section, based upon capital investment and employment of full-time  
33 employees, if that capital investment or employment was the basis  
34 for which a grant was provided to the business pursuant to the  
35 "Urban Transit Hub Tax Credit Act," P.L.2007, c.346 (C.34:1B-207  
36 et seq.).

37 (4) Full-time employment for an accounting or privilege period  
38 shall be determined as the average of the monthly full-time  
39 employment for the period.

40 (5) The capital investment of the owner of a qualified business  
41 facility is that percentage of the capital investment made or  
42 acquired by the owner of the building that the percentage of net  
43 leasable area of the qualified business facility not leased to tenants  
44 is of the total net leasable area of the qualified business facility.

45 <sup>1</sup>For a business that is a tenant, the amount of capital investment in  
46 a facility that a leased area represents shall be equal to that  
47 percentage of the owner's total capital investment in the facility that  
48 the percentage of net leasable area leased by the tenant is of the

1 total net leasable area of the qualified business facility. Capital  
2 investments made by a tenant shall be deemed to be included in the  
3 calculation of the capital investment made or acquired by the  
4 owner, but only to the extent necessary to meet the owner's  
5 minimum capital investment of \$20,000,000. Capital investments  
6 made by a tenant and not allocated to meet the owner's minimum  
7 capital investment threshold of \$50,000,000 shall be added to the  
8 amount of capital investment represented by the tenant's leased area  
9 in the qualified business facility.<sup>1</sup>

10 b. A business shall apply for the tax credit prior to July 1,  
11 2014, and shall submit its documentation indicating that it has met  
12 the capital investment and employment specified in the project  
13 agreement for certification of its credit amount no later than July  
14 28, 2017.

15 c. (1) The amount of credit allowed shall not exceed the capital  
16 investment made by the business or the capital investment  
17 represented by the business' leased area, as certified by the authority  
18 pursuant to subsection b. of this section, as having met the  
19 investment capital and employment qualifications, subject to any  
20 reduction or disqualification as provided by subsection d. of this  
21 section as determined by annual review by the authority. In  
22 conducting its annual review, the authority may require a business  
23 to submit any information determined by the authority to be  
24 necessary and relevant to its review.

25 The credit amount for any tax period ending after July 28, 2017,  
26 during which the documentation of a business' credit amount  
27 remains uncertified shall be forfeited, although credit amounts for  
28 the remainder of the years of the 10-year credit period shall remain  
29 available to it.

30 The credit amount that may be taken for a tax period of the  
31 business that exceeds the final liabilities of the business for the tax  
32 period may be carried forward for use by the business in the next 20  
33 successive tax periods, and shall expire thereafter, provided that the  
34 value of all credits approved by the authority against tax liabilities  
35 pursuant to P.L. , c. (pending before the Legislature as this bill),  
36 in any fiscal year shall not exceed \$150,000,000 and the combined  
37 value of all credits approved by the authority pursuant to P.L.2007,  
38 c.346 (C.34:1B-207 et seq.) and P.L. , c. (C. ) (pending  
39 before the Legislature as this bill) shall not exceed \$1,500,000,000.

40 The amount of credit allowed for a tax period to a business that  
41 is a tenant in a qualified business facility shall not exceed the  
42 business' total lease payments for occupancy of the qualified  
43 business facility for the tax period.

44 (2) A business that is a partnership shall not be allowed a credit  
45 under this section directly, but the amount of credit of an owner of a  
46 business shall be determined by allocating to each owner of the  
47 partnership that proportion of the credit of the business that is equal  
48 to the owner of the partnership's share, whether or not distributed,



1 of the total distributive income or gain of the partnership for its tax  
2 period ending within or with the owner's tax period, or that  
3 proportion that is allocated by an agreement, if any, among the  
4 owners of the partnership that has been provided to the Director of  
5 the Division of Taxation in the Department of the Treasury by such  
6 time and accompanied by such additional information as the  
7 director may require.

8 (3) The amount of credit allowed may be applied against the tax  
9 liability otherwise due pursuant to section 5 of P.L.1945, c.162  
10 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132  
11 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950,  
12 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

13 d. (1) If, in any tax period, the business reduces the total  
14 number of full-time employees in its Statewide workforce by more  
15 than 20 percent from the number of full-time employees in its  
16 Statewide workforce in the last tax period prior to the credit amount  
17 approval under section 3 of P.L. , c. (pending before the  
18 Legislature as this bill), then the business shall forfeit its credit  
19 amount for that tax period and each subsequent tax period, until the  
20 first tax period for which documentation demonstrating the  
21 restoration of the business' Statewide workforce to the threshold  
22 levels required by this paragraph has been reviewed and approved  
23 by the authority, for which tax period and each subsequent tax  
24 period the full amount of the credit shall be allowed.

25 (2) If, in any tax period, the number of full-time employees  
26 employed by the business at the qualified business facility located  
27 within a qualified incentive area drops below 100 or 80 percent of  
28 the number of new and retained full-time jobs specified in the  
29 project agreement, then the business shall forfeit its credit amount  
30 for that tax period and each subsequent tax period, until the first tax  
31 period for which documentation demonstrating the restoration of the  
32 number of full-time employees employed by the business at the  
33 qualified business facility to 100.

34 (3) (a) If the qualified business facility is sold in whole or in  
35 part during the 10-year eligibility period the new owner shall not  
36 acquire the capital investment of the seller and the seller shall  
37 forfeit all credits for the tax period in which the sale occurs and all  
38 subsequent tax periods, provided however that any credits of  
39 tenants shall remain unaffected.

40 (b) If a tenant subleases its tenancy in whole or in part during  
41 the 10-year eligibility period the new tenant shall not acquire the  
42 credit of the sublessor, and the sublessor tenant shall forfeit all  
43 credits for the tax period of its sublease and all subsequent tax  
44 periods.

45  
46 7. (New section) A business may apply to the Director of the  
47 Division of Taxation in the Department of the Treasury and the  
48 chief executive officer of the authority for a tax credit transfer

1 certificate, covering one or more years, in lieu of the business being  
2 allowed any amount of the credit against the tax liability of the  
3 business. The tax credit transfer certificate, upon receipt thereof by  
4 the business from the director and the chief executive officer of the  
5 authority, may be sold or assigned, in full or in part, to any other  
6 person that may have a tax liability pursuant to section 5 of  
7 P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of  
8 P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1  
9 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.  
10 The certificate provided to the business shall include a statement  
11 waiving the business's right to claim that amount of the credit  
12 against the taxes that the business has elected to sell or assign. The  
13 sale or assignment of any amount of a tax credit transfer certificate  
14 allowed under this section shall not be exchanged for consideration  
15 received by the business of less than 75 percent of the transferred  
16 credit amount. Any amount of a tax credit transfer certificate used  
17 by a purchaser or assignee against a tax liability shall be subject to  
18 the same limitations and conditions that apply to the use of the  
19 credit by the business that originally applied for and was allowed  
20 the credit.

21

22 8. (New section) a. The chief executive officer of the authority,  
23 in consultation with the Director of the Division of Taxation in the  
24 Department of the Treasury, shall adopt rules in accordance with  
25 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
26 seq.) as are necessary to implement P.L. , c. (C. ) (pending  
27 before the Legislature as this bill), including but not limited to:  
28 examples of and the determination of capital investment; the  
29 enumeration of qualified incentive areas; specific delineation of  
30 these incentive areas; the determination of the limits, if any, on the  
31 expense or type of furnishings that may constitute capital  
32 improvements; the promulgation of procedures and forms necessary  
33 to apply for a tax credit, including the enumeration of the  
34 certification procedures and allocation of tax credits for different  
35 phases of a qualified business facility; and provisions for tax credit  
36 applicants to be charged an initial application fee, and ongoing  
37 service fees, to cover the administrative costs related to the tax  
38 credit.

39 b. Through regulation, the authority shall establish standards  
40 by which qualified business facilities shall be constructed or  
41 renovated based on the green building manual prepared by the  
42 Commissioner of Community Affairs pursuant to section 1 of  
43 P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable  
44 energy, energy-efficient technology, and non-renewable resources  
45 in order to reduce environmental degradation and encourage long-  
46 term cost reduction.

1       9. Section 2 of P.L.2007, c.346 (C.34:1B-208) is amended to  
2 read as follows:

3       2. As used in this act:

4       "Affiliate" means an entity that directly or indirectly controls, is  
5 under common control with, or is controlled by the business.  
6 Control exists in all cases in which the entity is a member of a  
7 controlled group of corporations as defined pursuant to section 1563  
8 of the Internal Revenue Code of 1986 (26 U.S.C.s.1563) or the  
9 entity is an organization in a group of organizations under common  
10 control as defined pursuant to subsection (b) or (c) of section 414 of  
11 the Internal Revenue Code of 1986 (26 U.S.C.s.414). A taxpayer  
12 may establish by clear and convincing evidence, as determined by  
13 the Director of the Division of Taxation in the Department of the  
14 Treasury, that control exists in situations involving lesser  
15 percentages of ownership than required by those statutes. An  
16 affiliate of a business may contribute to meeting either the qualified  
17 investment or full-time employee requirements of a business that  
18 applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-  
19 209).

20       "Authority" means the New Jersey Economic Development  
21 Authority established by section 4 of P.L.1974, c.80 (C.34:1B-4).

22       "Business" means a corporation that is subject to the tax imposed  
23 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a  
24 corporation that is subject to the tax imposed pursuant to sections 2  
25 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), section 1 of  
26 P.L.1950, c.231 (C.17:32-15) or N.J.S.17B:23-5, or is a partnership,  
27 an S corporation, or a limited liability corporation. A business shall  
28 include an affiliate of the business if that business applies for a  
29 credit based upon any capital investment made by or full-time  
30 employees of an affiliate.

31       "Capital investment" in a qualified business facility means  
32 expenses incurred after, but before the end of the eighth year after,  
33 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) for: a.  
34 the site preparation and construction, repair, renovation,  
35 improvement, equipping, or furnishing of a building, structure,  
36 facility or improvement to real property; and b. obtaining and  
37 installing furnishings and machinery, apparatus or equipment for  
38 the operation of a business in a building, structure, facility or  
39 improvement to real property.

40       "Eligible municipality" means a municipality: (1) which qualifies  
41 for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.) or  
42 which was continued to be a qualified municipality thereunder  
43 pursuant to P.L.2007, c.111; and (2) in which 30 percent or more of  
44 the value of real property was exempt from local property taxation  
45 during tax year 2006. The percentage of exempt property shall be  
46 calculated by dividing the total exempt value by the sum of the net  
47 valuation which is taxable and that which is tax exempt.

1 "Full-time employee" means a person employed by the business  
2 for consideration for at least 35 hours a week, or who renders any  
3 other standard of service generally accepted by custom or practice  
4 as full-time employment, or a person who is employed by a  
5 professional employer organization pursuant to an employee leasing  
6 agreement between the business and the professional employer  
7 organization, in accordance with P.L.2001, c.260 (C.34:8-67 et  
8 seq.) for at least 35 hours a week, or who renders any other standard  
9 of service generally accepted by custom or practice as full-time  
10 employment, and whose wages are subject to withholding as  
11 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
12 et seq. or an employee who is a resident of another State but whose  
13 income is not subject to the "New Jersey Gross Income Tax Act,"  
14 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
15 for the partnership for at least 35 hours a week, or who renders any  
16 other standard of service generally accepted by custom or practice  
17 as full-time employment, and whose distributive share of income,  
18 gain, loss, or deduction, or whose guaranteed payments, or any  
19 combination thereof, is subject to the payment of estimated taxes, as  
20 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
21 et seq. "Full-time employee" shall not include any person who  
22 works as an independent contractor or on a consulting basis for the  
23 business.

24 "Mixed use project" means a project comprising both a qualified  
25 business facility and a qualified residential project.

26 "Partnership" means an entity classified as a partnership for  
27 federal income tax purposes.

28 "Professional employer organization" means an employee leasing  
29 company registered with the Department of Labor and Workforce  
30 Development pursuant to P.L.2001, c.260 (C.34:8-67 et seq.).

31 "Qualified business facility" means any building, complex of  
32 buildings or structural components of buildings, and all machinery  
33 and equipment located within a designated urban transit hub in an  
34 eligible municipality, used in connection with the operation of a  
35 business.

36 "Qualified residential project" shall have the meaning ascribed to  
37 that term under section 34 of P.L.2009, c.90 (C.34:1B-209.2).

38 "Residential unit" means a residential dwelling unit such as a  
39 rental apartment, a condominium or cooperative unit, a hotel room,  
40 or a dormitory room.

41 "Urban transit hub" means:

42 a. property located within a 1/2 mile radius surrounding the  
43 mid point of a New Jersey Transit Corporation, Port Authority  
44 Transit Corporation or Port Authority Trans-Hudson Corporation  
45 rail station platform area, including all light rail stations, and  
46 property located within a one mile radius of the mid point of the  
47 platform area of such a rail station if the property is in a qualified

1 municipality under the "Municipal Rehabilitation and Economic  
2 Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et seq.);

3 b. property located within a 1/2 mile radius surrounding the  
4 mid point of one of up to two underground light rail stations'  
5 platform areas that are most proximate to an interstate rail station;

6 c. property adjacent to, or connected by rail spur to, a freight  
7 rail line if the business utilizes that freight line at any rail spur  
8 located adjacent to or within a one mile radius surrounding the  
9 entrance to the property for loading and unloading freight cars on  
10 trains;

11 which property shall have been specifically delineated by the  
12 authority pursuant to subsection e. of section 3 of P.L.2007, c.346  
13 (C.34:1B-209).

14 A property which is partially included within the radius shall  
15 only be considered part of the urban transit hub if over 50 percent  
16 of its land area falls within the radius.

17 "Rail station" shall not include any rail station located at an  
18 international airport, except that any property within a 1/2 mile  
19 radius surrounding the mid point of a New Jersey Transit  
20 Corporation rail station platform area at an international airport  
21 upon which a qualified business facility is constructed or renovated  
22 commencing after the effective date of P.L. , c. (C. )  
23 (pending before the Legislature as this bill) shall be deemed an  
24 urban transit hub, excluding any property owned or controlled by  
25 the Port Authority of New York and New Jersey.

26 (cf: P.L.2011, c.89, s.1)

27

28 <sup>1</sup>10. Section 3 of P.L.2007, c.346 (C.34:1B-209) is amended to  
29 read as follows:

30 3. a. (1) A business, upon application to and approval from the  
31 authority, shall be allowed a credit of 100 percent of its capital  
32 investment, made after the effective date of P.L.2007, c.346  
33 (C.34:1B-207 et seq.) but prior to its submission of documentation  
34 pursuant to subsection c. of this section, in a qualified business  
35 facility within an eligible municipality, pursuant to the restrictions  
36 and requirements of this section. To be eligible for any tax credits  
37 authorized under this section, a business shall demonstrate to the  
38 authority, at the time of application, that the State's financial  
39 support of the proposed capital investment in a qualified business  
40 facility will yield a net positive benefit to both the State and the  
41 eligible municipality. The value of all credits approved by the  
42 authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) shall  
43 not exceed \$1,500,000,000.

44 (2) A business, other than a tenant eligible pursuant to  
45 paragraph (3) of this subsection, shall make or acquire capital  
46 investments totaling not less than \$50,000,000 in a qualified  
47 business facility, at which the business shall employ not fewer than  
48 250 full-time employees to be eligible for a credit under this

1 section. A business that acquires a qualified business facility shall  
2 also be deemed to have acquired the capital investment made or  
3 acquired by the seller.

4 (3) A business that is a tenant in a qualified business facility, the  
5 owner of which has made or acquired capital investments in the  
6 facility totaling not less than \$50,000,000, shall occupy a leased  
7 area of the qualified business facility that represents at least  
8 \$17,500,000 of the capital investment in the facility at which the  
9 tenant business and up to two other tenants in the qualified business  
10 facility shall employ not fewer than 250 full-time employees in the  
11 aggregate to be eligible for a credit under this section. The amount  
12 of capital investment in a facility that a leased area represents shall  
13 be equal to that percentage of the owner's total capital investment in  
14 the facility that the percentage of net leasable area leased by the  
15 tenant is of the total net leasable area of the qualified business  
16 facility. Capital investments made by a tenant shall be deemed to  
17 be included in the calculation of the capital investment made or  
18 acquired by the owner, but only to the extent necessary to meet the  
19 owner's minimum capital investment of \$50,000,000. Capital  
20 investments made by a tenant and not allocated to meet the owner's  
21 minimum capital investment threshold of \$50,000,000 shall be  
22 added to the amount of capital investment represented by the  
23 tenant's leased area in the qualified business facility.

24 (4) A business shall not be allowed tax credits under this section  
25 if the business participates in a business employment incentive  
26 grant relating to the same capital and employees that qualify the  
27 business for this credit, or if the business receives assistance  
28 pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is  
29 allowed a tax credit under this section shall not be eligible for  
30 incentives authorized pursuant to P.L.2002, c.43 (C.52:27BBB-1 et  
31 al.). A business shall not qualify for a tax credit under this section,  
32 based upon capital investment and employment of full-time  
33 employees, if that capital investment or employment was the basis  
34 for which a grant was provided to the business pursuant to the  
35 "InvestNJ Business Grant Program Act," P.L.2008, c.112 (C.34:1B-  
36 237 et seq.).

37 (5) Full-time employment for an accounting or privilege period  
38 shall be determined as the average of the monthly full-time  
39 employment for the period.

40 (6) The capital investment of the owner of a qualified business  
41 facility is that percentage of the capital investment made or  
42 acquired by the owner of the building that the percentage of net  
43 leasable area of the qualified business facility not leased to tenants  
44 is of the total net leasable area of the qualified business facility.

45 (7) A business shall be allowed a tax credit of 100 percent of its  
46 capital investment, made after the effective date of P.L.2011, c.89  
47 but prior to its submission of documentation pursuant to subsection  
48 c. of this section, in a qualified business facility that is part of a

1 mixed use project, provided that (a) the qualified business facility  
2 represents at least \$17,500,000 of the total capital investment in the  
3 mixed use project, (b) the business employs not fewer than 250 full-  
4 time employees in the qualified business facility, and (c) the total  
5 capital investment in the mixed use project of which the qualified  
6 business facility is a part is not less than \$50,000,000. The  
7 allowance of credits under this paragraph shall be subject to the  
8 restrictions and requirements, to the extent that those are not  
9 inconsistent with the provisions of this paragraph, set forth in  
10 paragraphs (1) through (6) of this subsection, including but not  
11 limited to the requirement that the business shall demonstrate to the  
12 authority, at the time of application, that the State's financial  
13 support of the proposed capital investment in a qualified business  
14 facility will yield a net positive benefit to both the State and the  
15 eligible municipality.

16 (8) In determining whether a proposed capital investment will  
17 yield a net positive benefit, the authority shall not consider the  
18 transfer of an existing job from one location in the State to another  
19 location in the State as the creation of a new job, unless (a) the  
20 business proposes to transfer existing jobs to a municipality in the  
21 State as part of a consolidation of business operations from two or  
22 more other locations that are not in the same municipality whether  
23 in-State or out-of-State, or (b) the business's chief executive officer,  
24 or equivalent officer, submits a certification to the authority  
25 indicating that the existing jobs are at risk of leaving the State and  
26 that the business's chief executive officer, or equivalent officer, has  
27 reviewed the information submitted to the authority and that the  
28 representations contained therein are accurate, and the business  
29 intends to employ not fewer than 500 full-time employees in the  
30 qualified business facility. In the event that this certification by the  
31 business's chief executive officer, or equivalent officer, is found to  
32 be willfully false, the authority may revoke any award of tax credits  
33 in their entirety, which revocation shall be in addition to any other  
34 criminal or civil penalties that the business and the officer may be  
35 subject to. When considering an application involving intra-State  
36 job transfers, the authority shall require the company to submit the  
37 following information as part of its application: a full economic  
38 analysis of all locations under consideration by the company; all  
39 lease agreements, ownership documents, or substantially similar  
40 documentation for the business's current in-State locations; and all  
41 lease agreements, ownership documents, or substantially similar  
42 documentation for the potential out-of-State location alternatives, to  
43 the extent they exist. Based on this information, and any other  
44 information deemed relevant by the authority, the authority shall  
45 independently verify and confirm, by way of making a factual  
46 finding by separate vote of the authority's board, the business's  
47 assertion that the jobs are actually at risk of leaving the State,  
48 before a business may be awarded any tax credits under this section.

1       b. A business shall apply for the credit within five years after  
2 the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.), and  
3 shall submit its documentation for approval of its credit amount  
4 within eight years after the effective date of P.L.2007, c.346  
5 (C.34:1B-207 et seq.).

6       c. (1) The amount of credit allowed shall, except as otherwise  
7 provided, be equal to the capital investment made by the business,  
8 or the capital investment represented by the business' leased area, or  
9 area owned by the business as a condominium, and shall be taken  
10 over a 10-year period, at the rate of one-tenth of the total amount of  
11 the business' credit for each tax accounting or privilege period of  
12 the business, beginning with the tax period in which the business is  
13 first **[approved]** certified by the authority as having met the  
14 investment capital and employment qualifications, subject to any  
15 reduction or disqualification as provided by subsection d. of this  
16 section as determined by annual review by the authority. In  
17 conducting its annual review, the authority may require a business  
18 to submit any information determined by the authority to be  
19 necessary and relevant to its review.

20       The credit amount for any tax period ending after the date eight  
21 years after the effective date of P.L.2007, c.346 (C.34:1B-207 et  
22 seq.) during which the documentation of a business' credit amount  
23 remains **[unapproved]** uncertified shall be forfeited, although credit  
24 amounts for the remainder of the years of the 10-year credit period  
25 shall remain available to it.

26       The credit amount that may be taken for a tax period of the  
27 business that exceeds the final liabilities of the business for the tax  
28 period may be carried forward for use by the business in the next 20  
29 successive tax periods, and shall expire thereafter, provided that the  
30 value of all credits approved by the authority against tax liabilities  
31 pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) in any fiscal year  
32 shall not exceed \$150,000,000.

33       The amount of credit allowed for a tax period to a business that  
34 is a tenant in a qualified business facility shall not exceed the  
35 business' total lease payments for occupancy of the qualified  
36 business facility for the tax period.

37       (2) A business that is a partnership shall not be allowed a credit  
38 under this section directly, but the amount of credit of an owner of a  
39 business shall be determined by allocating to each owner of the  
40 partnership that proportion of the credit of the business that is equal  
41 to the owner of the partnership's share, whether or not distributed,  
42 of the total distributive income or gain of the partnership for its tax  
43 period ending within or with the owner's tax period, or that  
44 proportion that is allocated by an agreement, if any, among the  
45 owners of the partnership that has been provided to the Director of  
46 the Division of Taxation in the Department of the Treasury by such  
47 time and accompanied by such additional information as the  
48 director may require.



1 (3) The amount of credit allowed may be applied against the tax  
2 liability otherwise due pursuant to section 5 of P.L.1945, c.162  
3 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132  
4 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950,  
5 c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

6 d. (1) If, in any tax period, fewer than 200 full-time employees  
7 of the business at the qualified business facility are employed in  
8 new full-time positions, the amount of the credit otherwise  
9 determined pursuant to final calculation of the award of tax credits  
10 pursuant to subsection c. of this section shall be reduced by 20  
11 percent for that tax period and each subsequent tax period until the  
12 first period for which documentation demonstrating the restoration  
13 of the 200 full-time employees employed in new full-time positions  
14 at the qualified business facility has been reviewed and approved by  
15 the authority, for which tax period and each subsequent tax period  
16 the full amount of the credit shall be allowed; provided, however,  
17 that for businesses applying before January 1, 2010, there shall be  
18 no reduction if a business relocates to an urban transit hub from  
19 another location or other locations in the same municipality. For  
20 the purposes of this paragraph, a "new full-time position" means a  
21 position created by the business at the qualified business facility  
22 that did not previously exist in this State.

23 (2) If, in any tax period, the business reduces the total number  
24 of full-time employees in its Statewide workforce by more than 20  
25 percent from the number of full-time employees in its Statewide  
26 workforce in the last tax accounting or privilege period prior to the  
27 credit amount approval under subsection a. of this section, then the  
28 business shall forfeit its credit amount for that tax period and each  
29 subsequent tax period, until the first tax period for which  
30 documentation demonstrating the restoration of the business'  
31 Statewide workforce to the threshold levels required by this  
32 paragraph has been reviewed and approved by the authority, for  
33 which tax period and each subsequent tax period the full amount of  
34 the credit shall be allowed.

35 (3) If, in any tax period, (a) the number of full-time employees  
36 employed by the business at the qualified business facility located  
37 in an urban transit hub within an eligible municipality drops below  
38 250, or (b) the number of full-time employees, who are not the  
39 subject of intra-State job transfers, pursuant to paragraph (8) of  
40 subsection a. of this section, employed by the business at any other  
41 business facility in the State, whether or not located in an urban  
42 transit hub within an eligible municipality, drops by more than 20  
43 percent from the number of full-time employees in its workforce in  
44 the last tax accounting or privilege period prior to the credit amount  
45 approval under this section, then the business shall forfeit its credit  
46 amount for that tax period and each subsequent tax period, until the  
47 first tax period for which documentation demonstrating the  
48 restoration of the number of full-time employees employed by the

1 business at the qualified business facility to 250 or an increase  
2 above the 20 percent reduction has been reviewed and approved by  
3 the authority, for which tax period and each subsequent tax period  
4 the full amount of the credit shall be allowed.

5 (4) (i) If the qualified business facility is sold in whole or in part  
6 during the 10-year eligibility period the new owner shall not acquire  
7 the capital investment of the seller and the seller shall forfeit all  
8 credits for the tax period in which the sale occurs and all subsequent  
9 tax periods, provided however that any credits of tenants shall  
10 remain unaffected.

11 (ii) If a tenant subleases its tenancy in whole or in part during  
12 the 10-year eligibility period the new tenant shall not acquire the  
13 credit of the sublessor, and the sublessor tenant shall forfeit all  
14 credits for the tax period of its sublease and all subsequent tax  
15 periods.

16 e. (1) The Executive Director of the New Jersey Economic  
17 Development Authority, in consultation with the Director of the  
18 Division of Taxation in the Department of the Treasury, shall adopt  
19 rules in accordance with the "Administrative Procedure Act,"  
20 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement  
21 this act, including but not limited to: examples of and the  
22 determination of capital investment; the enumeration of eligible  
23 municipalities; specific delineation of urban transit hubs; the  
24 determination of the limits, if any, on the expense or type of  
25 furnishings that may constitute capital improvements; the  
26 promulgation of procedures and forms necessary to apply for a  
27 credit, including the enumeration of the certification procedures and  
28 allocation of tax credits for different phases of a qualified business  
29 facility or mixed use project; and provisions for credit applicants to  
30 be charged an initial application fee, and ongoing service fees, to  
31 cover the administrative costs related to the credit.

32 (2) Through regulation, the Economic Development Authority  
33 shall establish standards based on the green building manual  
34 prepared by the Commissioner of Community Affairs pursuant to  
35 section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of  
36 renewable energy, energy-efficient technology, and non-renewable  
37 resources in order to reduce environmental degradation and  
38 encourage long-term cost reduction.<sup>1</sup>

39 (cf: P.L.2011, c.89, s.2)

40

41 <sup>1</sup>11. Section 2 of P.L.1996, c.25 (C.34:1B-113) is amended to  
42 read as follows:

43 2. As used in this act:

44 "Affiliate" means an entity that directly or indirectly controls, is  
45 under common control with, or is controlled by the business.  
46 Control exists in all cases in which the entity is a member of a  
47 controlled group of corporations as defined pursuant to section 1563  
48 of the Internal Revenue Code of 1986 (26 U.S.C. s.1563) or the

1 entity is an organization in a group of organizations under common  
2 control as defined pursuant to subsection (b) or (c) of section 414 of  
3 the Internal Revenue Code of 1986 (26 U.S.C. s.414). An entity  
4 may establish by clear and convincing evidence, as determined by  
5 the Director of the Division of Taxation in the Department of the  
6 Treasury, that control exists in situations involving lesser  
7 percentages of ownership than required by those statutes;

8 "Authority" means the New Jersey Economic Development  
9 Authority created pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.);

10 "Business retention or relocation grant of tax credits" or "grant of  
11 tax credits" means a grant which consists of the value of  
12 corporation business tax credits against the liability imposed  
13 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or credits  
14 against the taxes imposed on insurers pursuant to P.L.1945, c.132  
15 (C.54:18A-1 et al.), section 1 of P.L.1950, c.231 (C.17:32-15), and  
16 N.J.S.17B:23-5, provided to fund a portion of retention and  
17 relocation costs pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.);

18 "Business" means an employer located in this State that has  
19 operated continuously in the State, in whole or in part, in its current  
20 form or as a predecessor entity for at least 10 years prior to filing an  
21 application pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.) and  
22 which is subject to the provisions of R.S.43:21-1 et seq. and may  
23 include a sole proprietorship, a partnership, or a corporation that  
24 has made an election under Subchapter S of Chapter One of Subtitle  
25 A of the Internal Revenue Code of 1986, or any other business  
26 entity through which income flows as a distributive share to its  
27 owners, limited liability company, nonprofit corporation, or any  
28 other form of business organization located either within or outside  
29 the State. A business shall include an affiliate of the business if that  
30 business applies for a credit based upon any capital investment  
31 made by an affiliate or based upon retained full-time jobs of an  
32 affiliate;

33 "Capital investment" means expenses that the business incurs  
34 following its submission of an application to the authority pursuant  
35 to section 5 of P.L.1996, c.25 (C.34:1B-116), but prior to the  
36 Capital Investment Completion Date, as shall be defined in the  
37 project agreement, for: (1) the site preparation and construction,  
38 renovation, improvement, equipping of, or obtaining and installing  
39 fixtures and machinery, apparatus or equipment in, a newly  
40 constructed, renovated or improved building, structure, facility, or  
41 improvement to real property in this State; and (2) obtaining and  
42 installing fixtures and machinery, apparatus or equipment in a  
43 building, structure, or facility in this State. Provided however, that  
44 "capital investment" shall not include soft costs such as financing  
45 and design, furniture or decorative items such as artwork or plants,  
46 or office equipment if the office equipment is property with a  
47 recovery period of less than five years. The recovery period of any  
48 property, for purposes of this section, shall be determined as of the

1 date such property is first placed in service or use in this State by  
2 the business, determined in accordance with section 168 of the  
3 federal Internal Revenue Code of 1986 (26 U.S.C. s.168). A  
4 business that acquires or leases a qualified business facility shall  
5 also be deemed to have acquired the capital investment made or  
6 acquired by the seller or landlord, as the case may be;

7 "Certificate of compliance" means a certificate issued by the  
8 authority pursuant to section 9 of P.L.1996, c.25 (C.34:1B-120);

9 "Chief executive officer" means the chief executive officer of the  
10 New Jersey Economic Development Authority;

11 "Commitment duration" means the tax credit term and five years  
12 from the end of the tax credit term specified in the project  
13 agreement entered into pursuant to section 5 of P.L.1996, c.25  
14 (C.34:1B-116);

15 "Designated industry" means an industry identified by the  
16 authority as desirable for the State to maintain, which may be  
17 designated and amended via the promulgation of rules by the  
18 authority to reflect changing market conditions;

19 "Designated urban center" means an urban center designated in  
20 the State Development and Redevelopment Plan adopted by the  
21 State Planning Commission;

22 "Eligible position" means a full-time position retained by a  
23 business in this State for which a business provides employee health  
24 benefits under a group health plan as defined under section 14 of  
25 P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined  
26 under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or  
27 contract of health insurance covering more than one person issued  
28 pursuant to Article 2 of Chapter 27 of Title 17B of the New Jersey  
29 Statutes;

30 "Full-time employee" means a person employed by the business  
31 for consideration for at least 35 hours a week, or who renders any  
32 other standard of service generally accepted by custom or practice,  
33 as determined by the authority, as full-time employment, or a  
34 person who is employed by a professional employer organization  
35 pursuant to an employee leasing agreement between the business  
36 and the professional employer organization, in accordance with  
37 P.L.2001, c.260 (C.34:8-67 et seq.) for at least 35 hours a week, or  
38 who renders any other standard of service generally accepted by  
39 custom or practice, as determined by the authority, as full-time  
40 employment, and whose wages are subject to withholding as  
41 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
42 et seq. or an employee who is a resident of another State but whose  
43 income is not subject to the "New Jersey Gross Income Tax Act,"  
44 N.J.S.54A:1-1 et seq. or who is a partner of a business who works  
45 for the partnership for at least 35 hours a week, or who renders any  
46 other standard of service generally accepted by custom or practice,  
47 as determined by the authority, as full-time employment, and whose  
48 distributive share of income, gain, loss, or deduction, or whose

1 guaranteed payments, or any combination thereof, is subject to the  
2 payment of estimated taxes, as provided in the "New Jersey Gross  
3 Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time employee" shall  
4 not include any person who works as an independent contractor or  
5 on a consulting basis for the business;

6 "New business location" means the premises to which a business  
7 will relocate that the business has either purchased or built or for  
8 which the business has entered into a purchase agreement or a  
9 written lease for a period of no less than the commitment duration  
10 or eight years, whichever is greater, from the date of relocation. A  
11 "new business location" also means the business's current location  
12 or locations if the business makes a capital investment equal to the  
13 total value of the business retention or relocation grant of tax credits  
14 to the business at that location or locations;

15 "Program" means the Business Retention and Relocation  
16 Assistance Grant Program created pursuant to P.L.1996, c.25  
17 (C.34:1B-112 et seq.);

18 "Project agreement" means an agreement between a business and  
19 the authority that sets the forecasted schedule for completion and  
20 occupancy of the project, the date the commitment duration shall  
21 commence, the amount and tax credit term of the applicable grant of  
22 tax credits, and other such provisions which further the purposes of  
23 P.L.1996, c.25 (C.34:1B-112 et seq.);

24 "Retained full-time job" means an eligible position that currently  
25 exists in New Jersey and is filled by a full-time employee but  
26 which, because of a potential relocation by the business, is at risk of  
27 being lost to another state or country. For the purposes of  
28 determining a number of retained full-time jobs, the eligible  
29 positions of an affiliate shall be considered the eligible positions of  
30 the business;

31 "Tax credit term" means the period of time commencing with the  
32 first issuance of tax credits and continuing during the period in  
33 which the recipient of a grant of tax credits is eligible to apply the  
34 tax credits pursuant to section 7 of P.L.2004, c.65 (C.34:1B-115.3);  
35 and

36 "Yearly tax credit amount" means \$1,500 times the number of  
37 retained full-time jobs. "Yearly tax credit amount" does not include  
38 the amount of any bonus award authorized pursuant to section 5 of  
39 P.L.2004, c.65 (C.34:1B-115.1).<sup>1</sup>

40 (cf: P.L.2010, c.123, s.1)

41

42 <sup>1</sup>12. Section 7 of P.L.2004, c.65 (C.34:1B-115.3) is amended to  
43 read as follows:

44 7. a. The total value of the grants of tax credits, approved by  
45 the authority pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.), that  
46 may be applied against tax liability **[in a fiscal year]** for any tax  
47 period shall not exceed an aggregate annual limit of \$20,000,000.  
48 The total value of the grants of tax credits, issued pursuant to

1 P.L.1996, c.25 (C.34:1B-112 et seq.), that a single business may  
2 apply against its tax liability shall not exceed an aggregate annual  
3 limit of \$10,000,000 in a fiscal year. A tax credit issued pursuant to  
4 P.L.1996, c.25 may be applied against liability in the single tax  
5 period in which the tax credit or portion of the tax credit may be  
6 applied as prescribed by the project agreement and as set forth in  
7 subsection b. of this section and shall expire thereafter.

8 b. Subject to the limitation set forth in subsection a. of this  
9 section, grants of tax credits shall be approved for qualifying  
10 businesses according to the following schedule, and shall be issued  
11 upon the execution and satisfaction of the requirements of the  
12 project agreement between the authority and the business with an  
13 approved project:

14 (1) for a project that covers a business relocating or retaining 50  
15 to 250 full-time employees, a grant of tax credits shall be for the  
16 yearly tax credit amount plus any applicable bonus award  
17 determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-115.1),  
18 and may be applied against liability in the tax period in which the  
19 tax credit is issued;

20 (2) for a project that covers a business relocating or retaining  
21 251 to 400 full-time employees, a grant of tax credits shall be for  
22 two times the yearly tax credit amount plus any applicable bonus  
23 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
24 115.1), and may be applied against liability in the tax period in  
25 which the tax credit is issued and the following tax period, for one-  
26 half of the total grant award per tax period, provided that the use of  
27 the credit must be accompanied by a certificate of compliance;

28 (3) for a project that covers a business relocating or retaining  
29 401 to 600 full-time employees, a grant of tax credits shall be for  
30 three times the yearly tax credit amount plus any applicable bonus  
31 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
32 115.1) and may be applied against liability in the tax period in  
33 which the tax credit is issued and the following two tax periods, for  
34 one-third of the total grant award per tax period, provided that the  
35 use of the credit must be accompanied by a certificate of  
36 compliance;

37 (4) for a project that covers a business relocating or retaining  
38 601 to 800 full-time employees, a grant of tax credits shall be for  
39 four times the yearly tax credit amount plus any applicable bonus  
40 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
41 115.1) and may be applied against liability in the tax period in  
42 which the tax credit is issued and the following three tax periods,  
43 for one-fourth of the total grant award per tax period, provided that  
44 the use of the credit must be accompanied by a certificate of  
45 compliance;

46 (5) for a project that covers a business relocating or retaining  
47 801 to 1,000 full-time employees, a grant of tax credits shall be for  
48 five times the yearly tax credit amount plus any applicable bonus

1 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
2 115.1) and may be applied against liability in the tax period in  
3 which the tax credit is issued and the following four tax periods for  
4 one-fifth of the total grant award per tax period, provided that the  
5 use of the credit must be accompanied by a certificate of  
6 compliance; and

7 (6) for a project that covers a business relocating or retaining  
8 1,001 or more full-time employees, a grant of tax credits shall be  
9 for six times the yearly tax credit amount plus any applicable bonus  
10 award determined pursuant to section 5 of P.L.2004, c.65 (C.34:1B-  
11 115.1) and may be applied against liability in the tax period in  
12 which the tax credit is issued and the following five tax periods, for  
13 one-sixth of the total grant award per tax period, provided that the  
14 use of the credit must be accompanied by a certificate of  
15 compliance.

16 c. If the approval of a grant of tax credits pursuant to this  
17 section would exceed the \$20,000,000 aggregate annual limit, the  
18 authority may award a smaller grant of tax credits or no grants of  
19 tax credits, as necessary to comply with the aggregate annual limit.<sup>1</sup>  
20 (cf: P.L.2010, c.123, s.6)

21

22 <sup>1</sup>13. Section 17 of P.L.2004, c.65 (C.34:1B-120.2) is amended  
23 to read as follows:

24 17. a. The authority shall establish a corporation business tax  
25 credit and insurance premiums tax credit certificate transfer  
26 program to allow businesses in this State with unused amounts of  
27 tax credits issued under P.L.1996, c.25 (C.34:1B-112 et seq.), and  
28 otherwise allowable, that cannot be applied by the business to  
29 which originally issued before the expiration of the credit, to  
30 surrender those tax credits for use by other corporation business and  
31 insurance premiums taxpayers in this State. The tax credits may be  
32 used on the corporation business tax and insurance premiums tax  
33 returns to be filed by those taxpayers in exchange for private  
34 financial assistance to be provided by the corporation business  
35 taxpayer or insurance premiums taxpayer that is the recipient of the  
36 corporation business tax credit certificate or insurance premiums  
37 tax credit certificate to assist in the funding of costs incurred by the  
38 relocating business.

39 b. Businesses may apply to the executive director of the  
40 authority and the Director of the Division of Taxation for a tax  
41 credit transfer certificate, covering one or more years. Upon receipt  
42 thereof, the business may sell or assign the tax credit certificate in  
43 exchange for private financial assistance to be made by the  
44 purchaser in an amount equal to at least 75% of the amount of the  
45 surrendered tax credit of a business relocating in the State. The  
46 private financial assistance shall assist in funding expenses incurred  
47 in connection with the operation of the business in the State,  
48 including but not limited to the expenses of fixed assets, such as the

1 construction and acquisition and development of real estate,  
2 materials, start-up, tenant fit-out, working capital, salaries, research  
3 and development expenditures and any other expenses determined  
4 by the authority to be necessary to carry out the purposes of  
5 P.L.1996, c.25 (C.34:1B-112 et seq.).

6 c. The authority shall establish procedures to facilitate such  
7 transfers and encourage liquidity and simplicity in the market for  
8 the purchase and sale of such certificates, including, in the  
9 authority's discretion, coordinating the applications for surrender  
10 and acquisition of unused but otherwise allowable tax credits  
11 pursuant to this section in a manner that can best stimulate and  
12 encourage the extension of private financial assistance to businesses  
13 in this State.

14 d. The authority shall, in consultation with the Director of the  
15 Division of Taxation, develop criteria for the approval or  
16 disapproval of applications.<sup>1</sup>

17 (cf: P.L.2010, c.123, s.14)

18

19 <sup>1</sup>14. (New section) Section 6 of P.L.1996, c.25 (34:1B-117) is  
20 repealed.<sup>1</sup>

21

22 <sup>1</sup>[10.] 15.<sup>1</sup> This act shall take effect immediately.